

APPEAL NO. 030750
FILED MAY 12, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 11, 2003. With respect to the single issue before him, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the second quarter. In its appeal, the appellant (carrier) argues that the hearing officer erred in determining that the claimant is entitled to SIBs for the second quarter because his determination that the claimant had returned to work in a position relatively equal to her ability to work in the qualifying period is against the great weight of the evidence. In her response to the carrier's appeal, the respondent (claimant) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that she was assigned an impairment rating of 17% for her compensable injury; that she did not commute her impairment income benefits; that the second quarter of SIBs ran from October 4, 2002, to January 2, 2003; and that the qualifying period for the second quarter ran from June 22 to September 20, 2002. It is undisputed that the claimant returned to work for the employer where she sustained her compensable injury on (subsequent date of injury), and that she worked 15 to 20 hours per week at \$19.01 per hour. The claimant is a 17-year employee with the employer and when she returned to work following her compensable injury, she retained her seniority with the company and was given the pay increases that had been given while she had been off work due to her compensable injury.

The hearing officer did not err in determining that the claimant is entitled to SIBs for the second quarter. The hearing officer determined that the claimant satisfied the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)) by returning to work in a job relatively equal to her ability to work. The issue of whether the job that the claimant returned to with the employer in August 2002 was a job relatively equal to her ability to work was a factual question for the hearing officer. The hearing officer was persuaded that the claimant sustained her burden of proving that the job was a position relatively equal to the claimant's ability to work and he was acting within his role as the fact finder in so assessing the weight and credibility to be given to that evidence. The hearing officer's determination that the claimant satisfied the requirements of Rule 130.102(d)(1) in the relevant qualifying period is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust; thus, no sound basis exists for reversing that determination, or the determination that the claimant is entitled to SIBs for the second quarter, on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Margaret L. Turner
Appeals Judge

Edward Vilano
Appeals Judge